

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,  
VERONICA POLIDORI & POLI-GOLD, LLC. SETTLEMENT AGREEMENT DOCKET  
NO. 108-06**

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties (\$25,000/day/violation for criminal) according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-9*).

The principles that apply in the penalty policy are:

- 1) Penalties should be based on the nature and extent of the violation
- 2) Penalties should at a minimum, recover the economic benefit of noncompliance;
- 3) Penalties should be large enough to deter noncompliance;
- 4) Penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

To determine a civil penalty the State will consider:

- 1). the magnitude of the violations;
- 2) the degree of actual environmental harm or the potential for such harm created by the violations;
- 3) response and/or investigative costs incurred by the State or others;
- 4) any economic advantage the violator may have gained through noncompliance;
- 5) recidivism of the violator
- 6) good faith efforts of the violator
- 7) ability of the violator to pay;
- 8) the possible deterrent effect of a penalty to prevent future violations.

In the case of negotiated adjustments to penalties, arguments must be based on the considerations above.

Civil penalties for settlement purposes should be calculated based on the following formula:

**CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL  
CONSIDERATIONS**

Penalties are grouped in four main categories:

- A. \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment.
- B. \$2,000 to \$7,000 per day. Major violations of the Utah Water Quality Act, associated regulations, permits or orders.
- C. \$500 to \$2,000 per day. Significant violations of the Utah Water Quality Act, associated regulations, permits or orders.
- D. Up to \$500 per day. Minor violations of the Utah Water Quality Act, regulations, permits or orders.

Penalties are established within the penalty ranges shown above, based on the following criteria:

- History of compliance or non-compliance,
- Degree of willfulness or negligence, and
- Good faith efforts to comply.

Adjustments to the civil penalty include:

- The economic benefit gained as a result of non-compliance,
- Investigative costs incurred by the State and/or other governmental level,
- Documented monetary costs associated with environmental damage.

PENALTY - The penalty for Veronica Polidori & Poli-Gold, LLC. has been calculated as follows:

**Gravity Component:**

The gravity component of the penalty is based on violations causing the actual or potential harm to wildlife, fish, or aquatic life from the introduction of pollutants to Panguitch Lake; for not achieving compliance with a storm water permit; and for not having a storm water pollution prevention plan on the site and implemented.

**VIOLATION 1 Causing Harm to Wildlife, Fish, or Aquatic Life (10 days).**

Filling areas of the lake may require a permit from the Corp of Engineers, and a fill project in a lake or wetland will cause suspension of solids, (methods and types of fill could minimize the impact to fish or aquatic life). All CWA 404 permits are certified by DWQ. A 404 permit was not procured appropriately therefore, DWQ had no input to the fill operation.

This violation constitutes a Category C violation (illegal discharge containing significant quantities or concentrations of non-toxic or non-hazardous materials).

**VIOLATION 2 Not Being in Compliance with a Storm Water Permit (10 days).**

Poli-Gold had obtained coverage under the Construction Storm Water Permit, but made no visible effort to achieve compliance with permit terms at the site.

This violation constitutes a Category C violation (significant excursion of permit conditions).

**VIOLATION 3 Not Having a SWPPP on Site and Implemented (1 day).**

Poli-Gold had obtained coverage under the Construction Storm Water Permit, but did not have a storm water pollution prevention plan at the site.

The violation period for not having a SWPPP is a one day violation.

This violation constitutes a Category C violation (significant excursion of permit conditions).

The three factors 1) history of non-compliance, 2) degree of willfulness or negligence, and 3) good faith efforts to comply, are graded the same for each violation. There is no known history of non-compliance, therefore full credit is given for history of non-compliance (100%). There seems to have been a pervasive theme of negligence in getting permits and adhering to

compliance that revealed itself across the requirements of more than one agency, therefore no credit is given for degree of willfulness or negligence (0%). The good faith efforts were fairly good with little additional direction required to achieve compliance, therefore 80% credit is given for good faith efforts.

**Economic Benefit Justification:**

Economic benefit is calculated based on; 1. capital investment delayed; 2. delayed expenditures, and; 3. expenses not incurred. Avoided and delayed expenses are based on a survey of current construction, engineering and product costs. The field entries for the Environmental Protection Agency BEN model have been used in previous storm water calculations.

Capital Investment:	This part of the calculation includes pollution items that were delayed or not bought to avoid the discharge such as silt fencing, gravel socks, etc.
Expenditures:	This part of the calculation includes costs of items such as inspections, monitoring, and record keeping set up that were delayed.
O & M Costs:	Avoided operation and maintenance costs were used in the economic benefit calculation.

The economic benefit calculation is based on non-compliance from April 20, 2008 to May 4, 2008, for the delayed cost for 2,500 feet of installed silt fence at \$3,000.00 (25 man hours at \$20/hr, 34 X 75ft rolls at \$75/roll, rounded to \$3,000). Annual recurring cost is calculated at \$100/wk for maintenance of 2,500 feet of silt fence (\$5,200/yr).